

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

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HONORABLE FERNANDO M. OLGUIN, DISTRICT JUDGE PRESIDING

UNITED STATES OF AMERICA,)
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Plaintiffs,)
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)
)
vs.) No. CR 15-00206-FMO
)
)
)
NAYAR JOSUE BELTRAN CAMPOS,)
)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SENTENCING HEARING

LOS ANGELES, CALIFORNIA

THURSDAY, OCTOBER 27, 2022

MARIA R. BUSTILLOS
OFFICIAL COURT REPORTER
C.S.R. 12254
UNITED STATES COURTHOUSE
350 WEST 1ST STREET
SUITE 4455
LOS ANGELES, CALIFORNIA 90012
(213) 894-2739

A P P E A R A N C E S

**ON BEHALF OF THE PLAINTIFFS,
UNITED STATES OF AMERICA:**

OFFICE OF THE UNITED STATES
ATTORNEY
BY: CHRISTOPHER C. KENDALL,
ESQ.
312 NORTH SPRING STREET
SUITE 1400
LOS ANGELES, CA 90012
(213) 894-2576

**ON BEHALF OF THE DEFENDANTS,
NAYAR JOSUE BELTRAN CAMPOS:**

DAVID J.P. KALOYANIDES, A
PROFESSIONAL LAW CORPORATION
BY: DAVID J. KALOYANIDES,
ESQ.
111 WEST OCEAN BOULEVARD
SUITE 400
LONG BEACH, CA 90802
(213) 623-8120

ALSO APPEARING: MANENA FAYOS (SPANISH INTERPRETER)

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I N D E X

SENTENCING HEARING:

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1 LOS ANGELES, CALIFORNIA; THURSDAY, OCTOBER 27, 2022

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3 (COURT IN SESSION AT 2:16 P.M.)

4 THE COURTROOM DEPUTY: Calling case
5 CR 15-00206-FMO: *United States of America v. Nayar*
6 *Josue Beltran Campos.*

7 Counsel, please state your appearances.

8 MR. KENDALL: Good afternoon, Your Honor.
9 Chris Kendall on behalf of the United States.

10 THE COURT: Good afternoon.

11 MR. KALOYANIDES: Good afternoon, Your Honor.
12 David Kaloyanides with Mr. Beltran Campos, who's present
13 before the Court, in custody.

14 THE COURT: Okay. Can I ask the interpreter to
15 please state her name for the record.

16 THE INTERPRETER: Good afternoon, Your Honor.
17 Manena Fayos, certified interpreter in Spanish, with an
18 oath on file.

19 THE COURT: Okay. Why don't we get started.
20 Defendant previously pled guilty before me on
21 June 2nd, 2022. I've read and considered the following
22 documents: The presentence report filed on
23 July 14th, 2022, and the two addendums to the report,
24 the Government's sentencing papers filed on
25 July 18th, 2022, and defendant's sentencing papers filed

1 on October 14th, 2022. And I'll note for the record
2 that -- and we'll file these on the docket under seal
3 later -- that some paperwork was handed to me, which I
4 briefly reviewed on behalf of defendant in support of
5 his sentencing position that I have here. And we'll
6 make it part of the record later.

7 MR. KALOYANIDES: Thank you, Your Honor. And I
8 apologize for the delay in getting them.
9 Mr. Beltran Campos attempted to mail them to me, but
10 they were returned to him. I'm not sure what happened
11 there. And so today was the only opportunity I had
12 to --

13 THE COURT: That's fine. We'll add it to
14 the -- to the docket later.

15 MR. KALOYANIDES: Thank you.

16 THE COURT: Mr. Kendall, other than what you
17 stated in your sentencing papers, do you want to contest
18 or change anything in the presentence report?

19 MR. KENDALL: No, Your Honor.

20 THE COURT: Do you have anything you want to
21 present on behalf of the Government at this time or
22 would you rather wait to respond to Defense counsel?

23 MR. KENDALL: I think I'd rather wait to
24 respond, Your Honor.

25 THE COURT: Okay. Mr. Kaloyanides, have you

1 and your client read and discussed the presentence
2 report?

3 MR. KALOYANIDES: Yes, Your Honor.

4 THE COURT: Did you explain the contents of the
5 report to your client?

6 MR. KALOYANIDES: I did.

7 THE COURT: Do you have any concerns about his
8 ability to understand the report?

9 MR. KALOYANIDES: No.

10 THE COURT: Other than what you stated in your
11 sentencing papers, do you want to contest or change
12 anything in the presentence report?

13 MR. KALOYANIDES: Nothing in addition.

14 THE COURT: Do you have anything further you
15 want to present on behalf of your client at this time?

16 MR. KALOYANIDES: Nothing in addition,
17 Your Honor, but if the Court would allow me to highlight
18 some points?

19 THE COURT: Yes, go ahead.

20 MR. KALOYANIDES: There's kind of two aspects
21 here, and -- and in part, how we proceed will be
22 determined on whether or not the Court finds that
23 Mr. Beltran Campos was, in fact, subject to the
24 leadership or supervisor enhancement, there might be an
25 opportunity to consider whether or not he would be

1 safety-valve eligible but for that. The Government and
2 I disagree on two factors, whether or not he has fully
3 provided the information as required, but the first
4 preventing or hindering factor is the supervisor role
5 enhancement. As I stated in the papers, the facts just
6 don't support that enhancement -- the interpretation of
7 the facts. And we don't disagree with what the facts
8 are as to his conduct, but the interpretation that
9 Probation and the Government have made based on that
10 conduct is nothing different from as I mentioned: The
11 middleman, the broker, somebody who was arranging for
12 two parties to engage in a drug transaction. The mere
13 fact that somebody tells another person to go and
14 deliver an order is not the kind of control that the
15 Guidelines require and that the case law requires to
16 find some sort of supervisory position. Now, I've
17 stated all of this in the papers, but I wanted to
18 highlight that.

19 THE COURT: Yeah, and you did state all that in
20 the papers. And the only reason I -- I want to
21 interrupt you, is that you didn't frame the argument
22 as -- and to me, that's a much more serious argument --
23 as to whether or not this affects his safety-valve
24 eligibility. The way I read the argument was that, you
25 know, he's not quite this. He's this. So he should

1 have a lower -- a lower Guideline range, but it doesn't
2 affect the statutory minimum as far as that goes.

3 That's the way I read the argument.

4 MR. KALOYANIDES: And that is how it was
5 couched. I just want to alert the Court that if the
6 Court is going to -- there's two ways I think that the
7 Court can proceed here.

8 THE COURT: Okay.

9 MR. KALOYANIDES: The Court can say that, well,
10 I think that the evidence would suggest
11 Mr. Beltran Campos is a supervisor of some kind, but in
12 the Court's discretion isn't going to apply it in the
13 calculation of the Guidelines. I think the Court has
14 the ability to say that. It's a different thing to
15 say -- and then that would affect the total offense
16 level under the Guidelines -- we haven't even gotten to
17 3553(a) yet. It's a totally different analysis if the
18 Court says the evidence clearly does not support the
19 finding; and, therefore, he is not a supervisor. He
20 does not qualify for that. That then would remove the
21 block to the potential safety valve. We still have a
22 problem with the proffer. I'll be straightforward with
23 that. The Government and I disagree as to the full
24 scope of what he would have to -- what information he
25 would have to provide. So we still have that hurdle;

1 but I just wanted to alert the Court that there might be
2 this issue, depending on how the Court rules on the role
3 enhancement.

4 Beyond that, the only other point I really want
5 to stress, both under a Guideline analysis and a 3553(a)
6 analysis, is the clear abdication that the Sentencing
7 Commission committed by when it created the
8 methamphetamine Guidelines, that they just don't apply
9 the way they originally were intended. Purity and
10 quantity no longer can be said to be linked to
11 culpability. And, again, I've provided extensive
12 briefing on this point; but I think the court -- I think
13 all the courts need to send a message to Congress by
14 saying, this is a categorical policy disagreement we
15 have because this no longer applies. And until we start
16 having more and more courts say that, which we are, but
17 more and more courts coming out and declaring that
18 policy disagreement, I don't think we're going to see a
19 meaningful change either in the Commission's work or
20 even Congress has to step in to order the Commission to
21 review the distinction between -- or -- or the
22 culpability analysis based on purity and quantity. And
23 so that's the only other point I wanted to highlight.
24 All of those factors, as well as everything else that
25 I've put in the brief, considering Mr. Beltran Campos'

1 background, the enormous stress that this case is having
2 on his children, the Court is well-aware that
3 Mr. Campos' wife is also in the case; has pled guilty in
4 the case; is looking at potential prison time in the
5 case. And while every time we have a defendant who
6 commits an offense, it affects more than just that
7 defendant. It affects the family. And unfortunately,
8 children, whether minors or young adults, always bear
9 the brunt. It is a factor that I want the Court to
10 consider. And if we are stuck with the mandatory
11 minimum, that's all we should be stuck with. And unless
12 the Court has specific questions, I'll submit on my
13 brief.

14 THE COURT: No questions, no.

15 Mr. Kendall....

16 MR. KENDALL: I'll start with the math
17 Guidelines because I know -- I've been in this courtroom
18 before. So I want to address this one head on. So in
19 footnote one, I actually laid out the Government's
20 position on this. And I'm sure the Court has read it,
21 but just really to highlight it: So we get to an
22 offense level of 36 based on 3,567 grams of
23 methamphetamine. That's an actual amount that was
24 seized. In addition to that, there were communications
25 about 15 pounds of methamphetamine. And then we don't

1 know if it was pure or not. I suspect it was close to
2 a hundred percent pure, because for all the reasons we
3 shouldn't consider purity according to the Defense, it
4 always is, especially in Mexico. So even if you just
5 looked at it as a mixture and substance amount at
6 15 pounds, we still get to an offense level of 36. And,
7 in fact, actually if you add those two amounts together,
8 you get to a 38; but here, I'm trying to be generous
9 and -- and take the rule of lenity into consideration,
10 there just isn't a scenario where we should have
11 anything less than an offense level of -- a base offense
12 level of 36 here. So I do hope that the Court considers
13 those other conversations, even though we didn't seize
14 those particular drugs. This isn't someone who just
15 happened to sell 50 grams of methamphetamine, and that's
16 the only thing they ever did.

17 So next, with the -- with respect to the stress
18 on the children, several years ago, I offered this
19 defendant the opportunity to cooperate. And one of the
20 choices I gave him was if he could put us in touch with
21 his ex-wife so I could talk with her and have her
22 self-surrender to the United States so that I wouldn't
23 have to extradite her so she'd be stuck in Mexican
24 prison. He decided not to do that. So instead of
25 allowing me to get this woman, who he put into this

1 criminal enterprise, to self-surrender so she would
2 never have to serve a day in jail, he didn't do that.
3 So the reason the kids are without their mom right now
4 is because of him. I fully suspect and -- you know, at
5 her initial appearance, she said that she wanted to
6 plead guilty -- I actually had to think about if you
7 actually do that at an initial appearance. She's the
8 exact opposite of this defendant. She's accepted
9 responsibility immediately. So any harm to the
10 children, I think could be considered with respect to
11 her, but definitely not with respect to this defendant.

12 The safety valve, I agree is -- is a
13 significant issue in this case. I disagree that it
14 should be as significant, given the extraordinarily high
15 Guidelines here.

16 I certainly think he has an aggravating role.
17 Again, in the -- I believe it's footnote two, I lay out
18 just with respect to Sanchez Rocha, some of the
19 descriptions used in the PSR. So arranging with
20 Carliyos deliver, instructing Sanchez Rocha to call
21 another person, telling Sanchez Rocha to deliver
22 8 pounds of methamphetamine. These are exactly the type
23 of active direction terms that do define someone
24 supervising someone else; but, of course, it isn't just
25 Sanchez Rocha. The Court today sat through a change of

1 plea -- and I know the plea agreement refers to
2 co-conspirator 1, co-conspirator 2 -- I believe that
3 co-conspirator 1 in that plea agreement is this
4 defendant. You can certainly line up the factual bases.
5 Everything she was doing was at this defendant's
6 direction. She wasn't just picking up and dropping off
7 drug proceeds at a bank because that was like a fun
8 thing for her to do. She was doing it because this
9 defendant was telling her to do that. This is exactly
10 the kind of defendant that is responsible for the
11 couriers -- for -- for Ms. Martell Obeso, these people
12 getting involved in the criminal enterprise. Throughout
13 this case, the Government has agreed with minor roles.
14 Sometimes we've disagreed with the Court as to what a
15 particular defendant should get, but this defendant is
16 at the top of the case. He's not defendant 1, 2, or 3.
17 They're still at large in Mexico, but he is on par with
18 them. And just even the fact he was in Mexico directing
19 the activities of people in the United States shows that
20 he was a manager of others. So I firmly believe he's --
21 he has an aggravated role. And we're not even
22 advocating for the plus four, leadership, just the plus
23 three for being a manager in a conspiracy involving five
24 or more people.

25 And I apologize that I'm talking fast to the

1 court reporter. I told her I'd try to do better this
2 afternoon.

3 With respect to the proffer, the Defense
4 counsel said that we had a disagreement about the full
5 scope of a safety-valve proffer. I do think that is
6 part of it. Defendant previously attempted to do a
7 safety-valve proffer in this case. During that time, he
8 refused to talk about some topics, including
9 Ms. Martell Obeso, which wouldn't make it a complete
10 proffer. But at that time, he maintained that he was
11 never involved with any drug distribution at all. So,
12 obviously, that's just not true.

13 I don't have any reason to believe he would be
14 fully truthful if we did meet with him, but I don't
15 think it even matters, because I don't think he
16 qualifies under the leadership enhancement. Otherwise,
17 you know, I think we've laid out in our position. I
18 think the PSR very well describes his involvement of
19 both, in the drug trafficking and money laundering
20 operations, in this case. And I would stress to the
21 Court that this isn't the ordinary kind of defendant
22 that is presented before the Court.

23 THE COURT: Okay. Mr. Kaloyanides, would you
24 like to respond?

25 MR. KALOYANIDES: Briefly, Your Honor.

1 THE COURT: Okay.

2 And I won't belabor any of the points; but,
3 again, I want to emphasize what is required is not just
4 direction, but it's the control. That's what the cases
5 have said must be the focus in determining whether a
6 role enhancement should be applied. It's control over
7 another, not just telling them what to do. And what we
8 see in the facts here is a lot of discretion was given
9 to those who were told to deliver. You make
10 arrangements with the person. Here's the phone number.
11 You take care of it. That's not the kind of control
12 that I think warrants, particularly in this case. And
13 it's not the level of his involvement. Again, for
14 the -- you can have someone who's integral, who absent
15 that person, the -- the conspiracy would fall apart.
16 That doesn't make them eligible for the enhancement.
17 Again, it's who are they controlling. And that's really
18 what the cases focus on. Even if the Court finds that
19 the -- the additional quantities that the Government
20 suggests were in the phone calls, even if the Court
21 finds that the calculation that the PSR determined is
22 his total offense level is correct, we still come back
23 to the 3553(a) factors call for no more than a mandatory
24 minimum sentence here. No other defendant who has been
25 sentenced received more than 120 months. And most

1 received far less. So we do have the question of the
2 235-month sentence being a gross disparity from all the
3 other sentences here. There's no question it's
4 Mr. Beltran Campos' conduct that has caused harm to his
5 family. And he acknowledges that. And we're not trying
6 to say that it was something he didn't do. My point is,
7 the fact that these innocent children are being affected
8 is something the Court can and should take into account
9 in determining what is the appropriate sentence. Again,
10 you know, for someone who has no criminal history that
11 we could determine, 120 months is a very long sentence.
12 Hopefully their mother will be released quickly and
13 returned to Mexico; but, again, they will be without
14 their father. And that is something I'm asking the
15 Court to reflect on in making the determination.

16 Thank you.

17 MR. KENDALL: Very briefly, Your Honor.

18 So Defense counsel just talked about control.
19 Defendant provided Tovar's number to Sanchez Rocha and
20 instructed him to call Tovar. This isn't, Sanchez
21 Rocha, just do whatever you want. It's telling him
22 to -- specifically who to call. He told Sanchez Rocha
23 to deliver 8 pounds of methamphetamine to Tovar. This
24 isn't, you know, go to the U.S., find someone to give
25 the drugs to. It's telling people where to go, who to

1 meet with. That's the kind of direction that makes drug
2 conspiracies work. Without that direction, it would be
3 chaos. So it's an essential part of all that.

4 There is one other thing I want to add that's
5 unrelated to all this. There's a point made in the
6 Defense papers about Mr. Beltran Campos having been
7 arrested in Mexico, whether or not, he should get credit
8 for that time. He should get credit for that time if he
9 was arrested based on this charge, which he was. He
10 was -- and just so it's in the record, which matters for
11 BOP's calculation, nothing that the Court needs to
12 consider.

13 THE COURT: Uh-huh.

14 MR. KENDALL: That was on July 19th, 2018,
15 according to an e-mail that I received. So to the
16 extent that that comes up with the Bureau of Prisons --
17 and I will work with Defense counsel to make sure that
18 they have that information, as well when it comes time
19 to sentence him -- or to --

20 THE COURT: So that's -- the date was when?
21 July --

22 MR. KENDALL: July 19th, 2018.

23 THE COURT: Okay.

24 MR. KALOYANIDES: And I appreciate that,
25 Your Honor. And that was my concern, is that without

1 some specific information in the PSR, I didn't want the
2 BOP to think that there wasn't an issue of time-served
3 in Mexico, because yes, he would get credit for that
4 time. And I'm not sure what is necessary for the BOP.
5 But I appreciate that Government counsel has put that on
6 the record, and then we'll work with the BOP as
7 necessary, but I just wanted that to be noted for the
8 purposes of their calculation. I know it's not
9 something that the Court gets involved in.

10 MR. KENDALL: And I've dealt with this matter
11 before in other extradition cases. It really is just a
12 matter of Defense counsel -- and I'm happy to help
13 facilitate this -- being in touch with the Bureau of
14 Prisons and providing this information. They do all
15 these calculations. I think it's in Houston or
16 somewhere in Texas that they do all this. So truly
17 however I can help to do that, I'm happy to do so. I
18 don't want him to serve extra time and not get credit
19 for the time in Mexico. That just would not be fair.
20 So....

21 THE COURT: Okay. Mr. Campos, did you review
22 the presentence report with your attorney?

23 THE DEFENDANT: No -- you mean, if I
24 reviewed --

25 THE COURT: The presentence report, did you go

1 over it with him? Did you discuss it?

2 THE DEFENDANT: Just a little -- just only what
3 he told me.

4 THE COURT: Okay. And did he -- do you need
5 more time to review it with him, because we can -- we
6 can put this off for another day if you need more time
7 to review it.

8 MR. KALOYANIDES: If I may, Your Honor, we were
9 doing our consultations with McFarland, the facility
10 where Mr. Beltran Campos is located by Zoom, and I had
11 an interpreter. And so he did not have a copy. So we
12 were translating it. And he asked me just to go over
13 the pertinent parts. So it was not word for word
14 translated at his request, but we went over what the
15 findings were, what they meant, and what our arguments
16 would be.

17 THE COURT: Do you understand what your lawyer
18 just said? So you understand -- do you have the overall
19 gist of what was in the Pretrial Service's report?

20 THE DEFENDANT: I understand very little. In
21 fact, I asked him what are the arguments that you will
22 present on my behalf.

23 THE COURT: Yeah.

24 THE DEFENDANT: And he was just giving me an
25 argument, and I was asking him why are you giving me an

1 argument. I even pressured him --

2 THE INTERPRETER: Correction by the
3 interpreter. I provided him.

4 THE DEFENDANT: -- with a motion and I asked
5 him to file it, and he said he couldn't do it.

6 THE COURT: He may have -- he filed a very
7 comprehensive sentencing brief on your behalf that's
8 very thorough, and he made several arguments in there.
9 And honestly, a lot of them I am going to adopt as -- I
10 was thinking of adopting as part of the sentencing, but
11 it's up to you, we can put this off, but if we put this
12 off, it's going to be -- you know, it's going to be a
13 few months because we're really backed up right now.
14 So -- but I want to make sure you had the time to review
15 everything. And if you want to discuss the pretrial
16 service's report again with your attorney, we can do it.
17 Maybe I can arrange something for the marshals and the
18 interpreter since the interpreter is here to discuss it
19 with you here today. And we'll come back. And if we
20 get an opening soon, we'll try to fit you in. So what
21 do you want to do?

22 THE DEFENDANT: Your Honor, since the last time
23 I spoke with you, when I was told that we would see you
24 here in August, I was very aware that we would meet here
25 again in August. I don't know why these things have

1 happened the way they have.

2 THE COURT: That has more to do with the
3 Court's schedule. I was pretty much not unavailable the
4 month of September for a variety of reasons. And this
5 is the first time in October that we could fit you in.
6 We tried to fit you in last week, but I was out -- I was
7 out sick last week.

8 THE DEFENDANT: I don't want to take anymore of
9 your valuable time. There's been a long time. I've
10 spent a long time and I was ending up --

11 THE COURT: Okay.

12 THE DEFENDANT: I'm ready.

13 THE COURT: Okay. Then let me ask you: Do you
14 have anything you want to say before I impose
15 sentencing? This is your opportunity to explain -- to
16 tell me anything you want about -- that you want me to
17 consider in the sentence I impose.

18 THE DEFENDANT: Yes, yes, if you would allow
19 me.

20 THE COURT: Okay.

21 THE DEFENDANT: First of all, thank you very
22 much for allowing me to speak. One of the things that
23 the U.S. attorney said that I was not being supportive,
24 and I am being supportive of him. And I could not
25 decide -- I could not decide on behalf of either people,

1 including the mother of my children. I spoke with her,
2 and I told her what the U.S. attorney had told me. She
3 said to me, you know what? I don't think it's fair.
4 And I said, yeah, but that's what he's proposing to me.
5 So at some point, I told this to the prosecutor and also
6 to the attorney I had before that I could not make
7 decisions on behalf of other people.

8 What I want to tell you is a few words that I
9 have written down here, if you will just allow me.

10 THE COURT: Go ahead.

11 THE DEFENDANT: Your Honor, Fernando Olguin,
12 thank you for giving me this opportunity to say to you a
13 few words to the court and to society regarding my big
14 remorse and my big apology for the bad actions that I
15 committed. For that reason, I am before you today to
16 receive my sentence. During this time that I have been
17 in custody, I have comprehended and understood that in
18 this life making bad decisions can only drive you to
19 death or to jail. Not only that, but you also hurt
20 those people close to you, the ones you love, mentally
21 and emotionally. It's very difficult not to be with
22 them on holidays, especially during situations where
23 there is illness. That is affecting me mentally. I'm
24 asking you for a bit of consideration in my sentence.
25 Like any other human being, we all make mistakes. And

1 from those mistakes, we learn in order to become a
2 better person. Thank you very much.

3 THE COURT: Okay. Except as otherwise stated
4 during this hearing, I find the presentence report to be
5 accurate and correct. And I adopt the report which is
6 hereby incorporated into this proceeding. Based on the
7 presentence report and the information filed by the
8 parties, I find the information in the record is
9 sufficient for the Court to meaningfully exercise its
10 sentencing authority in accordance with 18 U.S.C.
11 Section 3553(a). Defendant pled guilty to Count 1 of
12 the indictment which charged him with conspiracy to
13 import controlled substances, in violation of
14 21 U.S.C. Section 963. The Sentencing Guidelines are
15 the starting point in the initial benchmark in the
16 Court's analysis. I have consulted and taken into
17 account the November 2021 edition of the Guidelines.
18 Based on the plea agreement and the record before the
19 Court, the Court calculates the advisory Guideline range
20 as follows: The defendant's base offense level is 36,
21 pursuant to Sections 2(d)1.1(a)(5), (c)(2) of the
22 Guidelines. Defendant contends that the base offense
23 level should be 32 because the Guideline offense
24 calculation for methamphetamine is not based on any
25 empirical data that shows a connection between quantity

1 and purity and culpability; however, the Court will
2 consider this issue and address in assessing whether a
3 variance is warranted in this case.

4 Pursuant to Section 2D1.1(b) (5), there is a
5 two-level increase for conspiring to import
6 methamphetamine into the United States. Pursuant to
7 Sections 3B -- 3B1.1(b), (c) -- I'm sorry, 3. --
8 3B1.1(b), there's a three-level increase for defendant's
9 role as a manager or supervisor. I've considered
10 defendant's objections to probation's conclusion that
11 the role enhancement applies because he was at least a
12 manager or a supervisor in the criminal activity. Under
13 the circumstances, I agree with Probation's
14 determination that the record supports a finding that
15 defendant exercised control over at least codefendant
16 Sanchez Rocha.

17 Defendant also objects to certain paragraphs in
18 the PSR regarding his role in the conspiracy as
19 factually inaccurate or not supported by the other
20 statements in the PSR. The Court will order the
21 following revisions to the PSR, although these revisions
22 do not affect the Court's decision to apply the role
23 enhancement: Paragraph 36 will be stricken, except for
24 the statement that, "In the conspiracy Beltran Campos, a
25 Mexico base source of supply, communicated with both,

1 Mexico base and United States base drug distributors via
2 electronic text communications about importing
3 methamphetamine and other controlled substances into the
4 United States where the drugs would be further
5 distributed," which defendant admitted to when he pled
6 guilty.

7 As for paragraph 37, the Court finds that it is
8 supported by other statements in the PSR and the factual
9 basis for defendant's plea. Finally, the Court will
10 strike paragraph 47. The -- the PSR already contains
11 statements of fact regarding defendant's role and money
12 laundering relating to the conspiracy. And the Court
13 finds that the disputed characterization of those facts
14 in paragraph 47 is unnecessary.

15 Pursuant to sections 3E1.1(a), (b), there's a
16 three-level decrease because defendant timely accepted
17 responsibility for the offense. The Court agrees with
18 the presentence report's finding of a criminal history
19 score of zero. This results in a total offense level of
20 38 and a criminal history category of one. The
21 Guideline range for custody is 235 to 293 months. There
22 is a statutory minimum in the case of 120 months. The
23 Guideline term for supervised release is five years.
24 The maximum fine is \$10,000,000 and the special
25 assessment for the crime's victim fund is a hundred

1 dollars.

2 Does either counsel know of any reason why
3 sentence should not now be imposed?

4 MR. KENDALL: No, Your Honor.

5 MR. KALOYANIDES: No reason, thank you,
6 Your Honor.

7 THE COURT: In addition to considering the
8 Guideline range, the Court must consider the factors
9 described in 18 U.S.C. Section 3553(a). The Court
10 cannot presume that the Guideline range is reasonable
11 nor can the Guidelines be given more or less weight than
12 any other factor set forth in Section 3553(a). In
13 determining this sentence I take very seriously my
14 obligation to act in accordance with the Sentencing
15 Guidelines admonition that the Court impose a sentence
16 sufficient but not greater than necessary to comply with
17 the purposes of sentencing.

18 These purposes include the need for the
19 sentence to reflect the seriousness of the crime, to
20 promote respect for the law, and to provide just
21 punishment for the offense. The sentence should also
22 deter criminal conduct, protect the public from future
23 crime by the defendant and promote rehabilitation. In
24 addition to the Guidelines and policy statements, I must
25 consider the nature and circumstances of the offense,

1 including the history and characteristics of the
2 defendant, the need to avoid unwarranted sentence
3 disparities among similarly situated defendants than the
4 kinds of sentences available. Mr. Campos who is
5 47 years old was born in Mexico. Growing up, he saw his
6 mother abused by his father and experienced physical
7 abuse himself. By the time his father passed away ten
8 years ago, Mr. Campos no longer had a relationship with
9 him.

10 According to Mr. Campos, his mother acted as
11 both, the mother and father figure to him. He remains
12 close to his mother, who's 77 years old, and lives in
13 Mexico; and he speaks with her regularly.

14 Mr. Campos also has two sisters and a brother.
15 His brother -- his brother who ran a used car business
16 and who Mr. Campos had a good relationship, was murdered
17 at age 32. One of Mr. Campos's sister is a
18 psychologist, and the other one works for a University.

19 Mr. Campos was previously married for 12 years
20 to Mercedes Martell, a codefendant in this case, who's
21 also in custody. He has two sons and two daughters from
22 his marriage with Ms. Martell. All of his children live
23 in Mexico. Julia, his oldest daughter, at 21 years old
24 has undergone rehabilitation after being drugged and
25 raped. Because both of Julia's parents are

1 incarcerated, she cares for her younger siblings.
2 Mr. Campos' youngest son and daughter, who are 15 and
3 10 years old respectively, are both in therapy as
4 relating to their parents' incarceration.

5 Mr. Campos has experienced health problems
6 while incarcerated. He needs surgery for persistent
7 urinary tract infections for which he currently takes
8 prostate medicine. He also experiences lower back pain
9 and needs new glasses. Although, he was previously
10 diagnosed and treated for depression, he does not
11 currently receive treatment. Mr. Campos also has a
12 history of alcohol and cocaine addiction.

13 Mr. Campos has an extensive work history. And
14 in 2014, he obtained a bachelors degree in Business
15 Administration. At the time of his arrest, he owned and
16 operated a business buying and selling vehicles for
17 about 20 years which he plans to resume after he is
18 released from prison and he returns to Mexico.

19 While in federal custody, Mr. Campos has worked
20 in the kitchen and in cleaning, and he currently works
21 in the yard. And I'll note that one of the things that
22 was submitted today were evaluations of his work which
23 were -- which were evaluations -- evaluated him as very
24 good or in different performance -- in his performance
25 at MDC.

1 And there's some evaluations where he is
2 evaluated as outstanding, as well. I'll note that for
3 the record.

4 In fashioning a sentence, the Court also takes
5 into account defendant's anticipated subsequent
6 deportation and the fact that his immigration status
7 makes him ineligible for most BOP programs, including
8 the ability to finish his sentence in a halfway house.

9 As a result, the sentence he will serve will be
10 significantly longer and thus harsher than the same
11 sentence imposed on a person with legal status.

12 In addition, Mr. Campos reports that he had --
13 that he -- that prior to his extradition, he'd been
14 detained in Mexico. And as we learned today, that
15 was -- that he has been in custody in Mexico since
16 July 19th of 2018. And so I just wanted to note that
17 for the record.

18 The Court also takes in consideration the fact
19 that Mr. Campos has been in custody for the entirety of
20 the pandemic. To control the spread of the COVID-19
21 virus, the BOP and its contracting facilities
22 implemented a number of restrictions, including 24-hour
23 lockdowns, elimination of in-person visits from families
24 and friends and reduced access to things, like
25 recreation, telephones, and social interaction.

1 Needless to say, inmates have no autonomy over
2 decisions, such as what personal protective equipment to
3 use or how to safely social distance.

4 In short, there's no doubt that Mr. Campos'
5 incarceration thus far has been much more harsh and
6 punitive than it would have been under ordinary
7 circumstances.

8 Finally, the Court notes that defendant's
9 Guideline range is driven to a large extent by the
10 quantity and purity of methamphetamine involved in this
11 case. As noted by the Supreme Court in
12 *Kimbrough v. United States*, the base offense levels for
13 drug trafficking cases under Section 2D1.1 are based on
14 a weight-driven scheme and are not the product of the
15 same empirical approach used in formulating offense
16 levels under other sections of the Guidelines. Courts
17 have recognized that when a Guideline is not based on
18 empirical data and national experience, the Guideline
19 sentence may not achieve the sentencing purposes set
20 forth in section 3553(a). As the courts explained in
21 *United States v. Hayes* and *United States v. Hubbell*,
22 this approach follows congressional directives rather
23 than applying the Commission's unique area of expertise
24 to assess the various factors contributing to a
25 defendant's culpability. In other words, sentences

1 under Section 2D1.1 create an increased possibility that
2 a particular defendant's culpability may not match the
3 severity of the punishment that results from the
4 quantity of controlled substances the defendant is found
5 to have at the sentencing phase.

6 Further, the Guidelines emphasis on drug purity
7 leads to arbitrary sentencing distinctions not related
8 to a defendant's culpability. This -- the distinction
9 in Guidelines sentences over pure methamphetamine has as
10 the Court explained in *United States v. Hendricks* led to
11 substantial and unwarranted disparities in sentencing
12 based solely on whether methamphetamine is lab-tested.
13 In other words, sentences based on methamphetamine
14 quantity and purity may be substantially increased, but
15 not for reasons that relate to the defendant's
16 culpability or the danger which he or she poses society.
17 Because today most methamphetamine seized at all
18 distributions is remarkably pure, which means that
19 higher purity is not a good indicator of a defendant's
20 place in the chain of distribution.

21 The Government contends that even if defendant
22 were only held accountable for 15 kilograms of a mixture
23 or substance containing a detectible amount of
24 methamphetamine, as discussed during his April 2013
25 communications with Carliyos, he would still have a base

1 offense level of 13; therefore, according to the
2 Government, even if the Court believes that the purity
3 of the methamphetamine should not be considered during
4 sentencing, the base offense level would remain the same
5 under Guidelines Section 2D1.1(c)(2); however, the
6 Government does not provide any record citations to
7 support its assertion regarding defendant's
8 communications with Carliynos involving 15 kilograms of
9 methamphetamine. And based on the Court's review of the
10 PSR, it appears that the Government is referring to
11 paragraph 40, which states that Campos inquired about
12 approximately 15 pounds of methamphetamine, which of
13 course, is less than the 15 kilogram cutoff that the
14 Government cites for the 36-point base offense level,
15 nor does adding the amount that defendant discussed with
16 Carliynos through the 35 -- through the 3,567 grams
17 described in the factual basis for defendant's plea,
18 reach the 15-kilogram cutoff.

19 Thus, the Government's contention that the
20 Court's policy disagreement with the methamphetamine
21 Guidelines makes no difference here, is unpersuasive.
22 In short, the Court believes that a variance is
23 warranted in this case. Although, the Court is still
24 constrained by the 120-month mandatory minimum custodial
25 sentence, here, Mr. Campos' abusive childhood, his

1 substance abuse issues, his stable employment history,
2 and the Court's policy disagreement with the Guidelines,
3 and the other Section 3553(a) factors discussed today,
4 justify a sentence below the Guideline range.

5 Under the circumstances, the Court is persuaded
6 that the following sentence is sufficient but not
7 greater than necessary to comply with the purposes of
8 sentencing set forth in 18 U.S.C. Section 3553(a).

9 First, it is the judgment of the Court that defendant
10 Nayar Josue Beltran Campos is committed on Count 1 of
11 the indictment to the custody of the Bureau of Prisons
12 for a term of 127 months. This sentence is reasonable
13 and proper in that it reflects the factors set forth in
14 Section 3553(a) and other congressional mandates.

15 Second, the Court finds that five years of
16 supervised release is appropriate. And the terms and
17 conditions of Mr. Campos' supervised release shall be
18 condition numbers 1 through 10 set forth on pages 2 and
19 3 of the probation officer's letter filed on
20 July 14th, 2022, which are hereby incorporated by
21 reference. The Court finds the duration, terms, and
22 conditions of supervised release ordered are reasonably
23 related to the history and characteristics of the
24 defendant. The need for the sentence imposed to afford
25 adequate deterrence to criminal conduct and the need to

1 protect the public from further crimes of the defendant.

2 The Court also finds the duration, terms, and
3 conditions of supervised release ordered herein involve
4 no greater deprivation of liberty that is necessary for
5 the purposes described earlier.

6 Condition numbers 1, 2, 7, and 8 are standard
7 conditions of supervision and are statutorily mandated.
8 Condition numbers 3 through 6 are imposed due to
9 defendant's history and characteristics. Condition
10 number 9 is imposed due to the nature and circumstances
11 of the offense. Condition number 10 is imposed based on
12 defendant's immigration status. The -- was there an
13 order of forfeiture in this case, Mr. Kendall?

14 MR. KENDALL: No, Your Honor.

15 THE COURT: No? Okay.

16 All fines are waived as the Court finds the
17 defendant does not have the ability to pay a fine.
18 Finally, the defendant shall pay to the United States a
19 special assessment of a hundred dollars which is due
20 immediately. Any unpaid balance shall be due during the
21 period of imprisonment at the rate of not less than \$25
22 per quarter and pursuant to the Bureau of Prisons Inmate
23 Financial Responsibility Program.

24 Mr. Kaloyanides, would your client like to
25 request that he be designated to a specific BOP

1 institution or a specific area within the United States?

2 MR. KALOYANIDES: Designation somewhere close
3 to the border just in case his family can come up and
4 visit.

5 THE COURT: Okay.

6 MR. KALOYANIDES: Whether that's California or
7 Arizona, whatever is appropriate.

8 I would though ask the Court to recommend that
9 the BOP consider and evaluate him for the RDAP program.

10 THE COURT: I was going to do that. I know
11 that they might -- I don't know why they don't but --
12 okay.

13 MR. KALOYANIDES: Well, and primarily because I
14 just want to emphasize for the record for the BOP's
15 edification, he's technically here legally, because he
16 was extradited.

17 THE COURT: I see.

18 MR. KALOYANIDES: So his status is technically
19 legal, even though he doesn't have a green card; he
20 doesn't have a visa. And I don't know, but I would hope
21 that that makes a difference in their determination of
22 the programs that he would be eligible for.

23 THE COURT: Then the Court recommends that the
24 defendant be assigned to a federal correctional facility
25 near the border -- near the California/Arizona border.

1 The Court also recommends that defendant be permitted to
2 participate in the BOP's RDAP program.

3 Mr. Campos, you may have a right to appeal the
4 sentence which the Court has imposed upon you. If you
5 wish to do so, you should discuss this matter with your
6 lawyer, who will assist you in the filing of a timely
7 notice of appeal. If you do not have the money to pay
8 the cost of that appeal, you can ask the Court upon
9 proper application to waive those costs. Do you
10 understand all of that?

11 THE DEFENDANT: Yes.

12 THE COURT: The statement of reasons shall be
13 included in the commitment order and judgment and shall
14 be provided to the Probation Office and Sentencing
15 Commission and the Bureau of Prisons. A complete copy
16 of the presentence report shall be provided to the
17 Bureau of Prisons and the Sentencing Commission. Any
18 other copies of the report and related materials shall
19 remain confidential.

20 If an appeal is taken, counsel on appeal shall
21 have further access to the report.

22 Do either counsel have anything further at this
23 time? Is there any charges to dismiss, Mr. Kendall?

24 MR. KENDALL: Yes, Your Honor; although, it's a
25 little bit of a strange situation, because it was an

1 open plea to only one count.

2 THE COURT: Oh, I see.

3 MR. KENDALL: It is actually somewhat rare. So
4 I think what I would ask here is perhaps that we move to
5 dismiss without prejudice --

6 THE COURT: Okay.

7 MR. KENDALL: -- those additional counts --

8 THE COURT: Okay.

9 MR. KENDALL: -- which is a strange ask, but it
10 is probably the right thing to do in this situation.

11 THE COURT: I'll order your motion granted.
12 And the charges -- the remaining charges are dismissed
13 without prejudice then.

14 MR. KENDALL: As to this defendant.

15 THE COURT: As to this defendant.

16 MR. KENDALL: Anything else, Mr. Kaloyanides?

17 MR. KALOYANIDES: No, thank you, Your Honor.

18 THE COURT: Okay. Thank you. We're in recess.

19 (Whereupon, proceeding adjourned.)

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C E R T I F I C A T E

UNITED STATES OF AMERICA :
vs. : No. CR 15-00206-FMO
NAYAR JOSUE BELTRAN CAMPOS :

I, MARIA BUSTILLOS, OFFICIAL COURT REPORTER, IN AND FOR THE
UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753,
TITLE 28, UNITED STATES CODE, THE FOREGOING IS A TRUE AND
CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED
PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE
TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATIONS
OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.
FEES CHARGED FOR THIS TRANSCRIPT, LESS ANY CIRCUIT FEE
REDUCTION AND/OR DEPOSIT, ARE IN CONFORMANCE WITH THE
REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

/s/ _____ 09/04/2023
MARIA R. BUSTILLOS DATE
OFFICIAL REPORTER

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